

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	)		
	)	Chapter 11	
SURGALIGN HOLDINGS, INC., et al.	)		United States Courts
	)		Southern District of Texas
	)		FILED
	)		JAN 09 2024
	)		
	)		Nathan Ochsner, Clerk of Court
RYAN MESSNER,	)		
	)	Case No. 23-90731	
Plaintiff(s),	)		
	)	Adversary Proceeding	
v.	)	Case No. 23-03150	
	)		
SURGALIGN HOLDINGS, INC.,	)		
	)		
Defendant(s).	)		

**PLAINTIFF RESPONSE TO  
MOTION OF PLAN ADMINISTRATOR AS THE PARTY IN INTEREST FOR LEAVE  
TO APPEAR AND FILE ANSWER TO COMPLAINT**

Pursuant to Plan Administrator's **MOTION OF PLAN ADMINISTRATOR AS THE PARTY IN INTEREST FOR LEAVE TO APPEAR AND FILE ANSWER TO COMPLAINT** filed on January 5, 2024, the Plaintiff responds accordingly:

Plan Administrator Comment:

Case 23-03150 Document 14 Filed in TXSB on 01/05/24 Page 2 of 7

1. Counsel to the Plan Administrator emailed Plaintiff on multiple occasions and offered multiple days for the meet and confer in accordance with the Order Setting Scheduling Conference.

Plaintiff Clarification:

Plaintiff previously provided to Plan Administrator in EXHIBIT F, and never received a response. Rule 26(f) stipulates:

*"the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held" ----- which was DECEMBER 20, 2023*

Plan Administrator Comment:

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Plaintiff responded, including former counsel to the Debtor, expressing his preference to submit a Unilateral Status Report to the Bankruptcy Court given the prior pleadings filed, the procedural issues pending, and his unfamiliarity with counsel for the Plan Administrator. Plaintiff would not consent to the Filing of an Answer by the Plan Administrator.

Plaintiff Clarification:

Plaintiff responded, providing the following explanation for the Unilateral filing. Plaintiff agrees with the procedural issues pending, and the unfamiliarity with Counsel comments, but disagrees with the prior pleadings filed comment.

I will not be returning your phone call today, not because of my unilateral status report filing as you suggested, but simply because there are multiple unresolved issues that I believe need to be resolved before moving forward.



Ryan Messner  
To: Jeffrey P. Nolan  
Cc: Colin R. Robinson; Bradford J. Sandler

Wed 1/3/2024 1:53 PM

Jeffrey:

I will not be returning your phone call today, not because of my unilateral status report filing as you suggested, but simply because there are multiple unresolved issues that I believe need to be resolved before moving forward.

As I have set forth in my JOINT RULE 26(f) REPORT STATUS, not the least of which is an open, unresolved MOTION TO DISMISS filed by Jackson Walker LLP, which you referenced in your original email correspondence on December 26, 2023, all of which seem to me to be issues that the Judge needs to resolve before we proceed.

Regards,

Ryan

Ryan Messner  
Paralegal | Notary Public, State at Large KY | Certified Remote Online Notary (RON)  
859.559.7985 | ryanmessner@hotmail.com | www.ron-ky.us

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Plan Administrator Comment:

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5. The Complaint filed in this adversary, is a non-dischargeability action filed pursuant to 11 U.S.C §523(a)(2) by a former shareholder of the Debtor for securities fraud and also seeking "Recovery of Money". Plaintiff asserts that former management of Surgalign Holdings, Inc. ("Surgalign") did not disclose material financial information to investors which if disclosed, would have altered Plaintiff's determination to invest in Surgalign. The SEC investigated Surgalign between 2015-2019 and reached a settlement resulting in a \$2,000,000 civil fine in 2022.

Plaintiff Clarification:

CURRENT management of SURGALIGN HOLDINGS, INC. did not disclose this pertinent financial information in a written press release, until AFTER the aforementioned SEC settlement was reached, and a press release was then issued in that regard on August 3, 2022.

SEC investigated FORMER management of RTI and their activities between 2015-2019.

Plan Administrator Comment:

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11. On October 2, 2023, the Defendant filed a Rule 12(b)(6) Motion to Dismiss the Complaint but allegedly failed to serve the Plaintiff.

Plaintiff Clarification:

Plaintiff is an unrepresented person, who is not registered as a Filing User in accordance with the Federal Rules of Civil and Criminal Procedure, and the Local Rules of this Court.

Plan Administrator Comment:

Case 23-03150 Document 14 Filed in TXSB on 01/05/24 Page 4 of 7

15. In accordance with the Scheduling Order, Plan Administrator sought the Plaintiff's consent to file an Answer to the Complaint prior to the January 10, 2024, Scheduling Conference. Plaintiff denied the request.

Plaintiff Clarification:

Plaintiff previously provided to Plan Administrator in EXHIBIT F, and never received a response.

*"Furthermore, I AGREE TO STIPULATE to extend the Defendant's answer date to 12/29/23 at 5:00 PM CDT."*

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of PLAINTIFF RESPONSE has been served as follows:

**Notice by electronic transmission was sent to the following persons/entities on January 8, 2024** (*Electronic transmission includes sending notices via email (Email/text and Email/PDF)*):

Veronica Ann Polnick

[vpolnick@jw.com](mailto:vpolnick@jw.com)

Jeffrey P. Nolan

[jnolan@pszjlaw.com](mailto:jnolan@pszjlaw.com)

Bradford J. Sandler

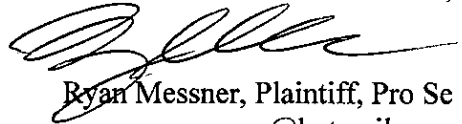
[bsandler@pszjlaw.com](mailto:bsandler@pszjlaw.com)

Gregory F. Pesce

[gregory.pesce@whitecase.com](mailto:gregory.pesce@whitecase.com)

TOTAL: 4

RESPECTFULLY SUBMITTED,



Ryan Messner, Plaintiff, Pro Se  
[ryanmessner@hotmail.com](mailto:ryanmessner@hotmail.com)

570 Camphor Way  
Lexington, KY 40509  
859.559.7985

Re: Suralign Holdings Filing

EXHIBIT F

Ryan Messner <ryanmessner@hotmail.com>

Fri 12/29/2023 10:03 AM

To: Jeffrey P. Nolan <jnolan@pszjlaw.com>

Cc: Colin R. Robinson <crobinson@pszjlaw.com>

2 attachments (469 KB)

EXHIBIT A.pdf; certificate of notice.pdf;

Jeffrey:

Thank you for providing clarity as to your firm's role in this process, and for addressing my questions to the best of your ability.

To expand upon the details provided regarding Rule 26(f), said Rule also requires the following:

*"the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held"*

A courtesy copy of EXHIBIT A attached will be incorporated within my INDIVIDUAL, JOINT RULE 26(f) REPORT STATUS, to be filed prior to January 5, 2024. EXHIBIT A was sent to Counsel of record on December 11, 2023, less than one business day after receiving the ORDER SETTING SCHEDULING CONFERENCE. As defined on page 2 of the CERTIFICATE OF NOTICE, for which I have also attached a courtesy copy, the following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 8, 2023 at the address(es) listed below:

*Name Email Address*

Veronica Ann Polnick on behalf of Defendant Suralign Holdings Inc. vpolnick@jw.com,  
kgradney@jw.com; dtrevino@jw.com; jpupo@jw.com; steso@jw.com; dduhon@jw.com

As clearly defined in EXHIBIT A, Plaintiff stated the following:

*Furthermore, I AGREE TO STIPULATE to extend the Defendant's answer date to 12/29/23 at 5:00 PM CDT.*

As demonstrated in EXHIBIT A, Plaintiff has fully complied with the Court Order, and does NOT consent to extend the filing of an Answer to the Complaint until January 10, 2024. Plaintiff proactively contacted Counsel of record, as defined on the CERTIFICATE OF NOTICE issued by the Court on December 10, 2023, attached hereto. Plaintiff never received a response from Counsel of record, and therefore will proceed with filing an INDIVIDUAL, JOINT RULE 26(f) REPORT STATUS.

Regards,

Ryan

**Ryan Messner**

Paralegal | Notary Public, State at Large KY | Certified Remote Online Notary (RON)

859.559.7985 | ryanmessner@hotmail.com | www.ron-ky.us

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**From:** Jeffrey P. Nolan <jnolan@pszjlaw.com>  
**Sent:** Thursday, December 28, 2023 1:06 PM  
**To:** Ryan Messner <ryanmessner@hotmail.com>  
**Cc:** Colin R. Robinson <crobinson@pszjlaw.com>  
**Subject:** RE: Suralign Holdings Filing

Ryan,

Addressing your questions, see below my responses in bold:

#1. Can you please confirm that you and Cia Mackle (copied on your email response to me) are currently representing Suralign Holdings, and if so, when did you enter your appearance?

**My firm is counsel to the Plan Administrator. Pursuant to the Plan, the Plan Administrator is sole officer and director of the Wind-Down Debtors. Under the Plan, the Wind-Down Debtors are deemed substituted in as the party-in-lieu of the Debtors in all matters, including adversary proceedings pending in this Court. See Confirmation Order, ¶67. Colin is included and was involved in the underlying case.**

#2. Can you also confirm that Veronica Polnick of Jackson Walker was relieved of those duties on September 27, 2023, and if there is a withdrawal of record on file for Jackson Walker?

**Yes, Jackson Walker is not representing the Wind-Down Debtors/Plan Administrator. No, there is not a withdrawal and one is not required as noted above, the Wind-Down Debtors are substituted in lieu of the Debtors.**

#3. I am out of town for the holidays, and will return on January 2, 2024. I am available on January 2, 2024, or thereafter.

**Pursuant to the Scheduling Order, a courtesy copy which I attach, the Court instructed the parties to meet and confer. The Court also indicated the parties can stipulate to extend the answer date to the Complaint up to the date of the scheduling conference. If you will consent to the filing of an Answer to the Complaint until January 10, 2024, I will prepare a joint stipulation and promptly move to get an Answer on file prior to the Scheduling Conference.**

**Please advise on or before January 3, 2024, if the Plaintiff will consent to the extension of the time to file an Answer. In the absence of your consent, we will file a motion to extend the time to answer. We'd prefer to avoid filing a motion but if we do not hear back from you by January 3, I will file a motion so this matter is at issue.**

**Additionally, the Order set forth that we are to meet and confer and file a joint report pursuant to Rule 26(f) at least 3 business days prior to the January 10, Scheduling Conference which is not later than January 5, 2024. If we talk upon your return from vacation on January 2, we can discuss what the report should include. I will offer to take the laboring oar to put together a joint discovery plan based on our conversation. I can circulate a draft joint report and we can timely file with the Court by the following Friday. Let me know what time on or after January 2 is convenient.**

If you have any questions, please feel free to reach out to me. Sorry to interrupt your break for the holidays and I look forward to hearing from you.

**Jeffrey P. Nolan**

Pachulski Stang Ziehl & Jones LLP

Tel: 310.277.6910 | Fax: 310.201.0760

[jnolan@pszjlaw.com](mailto:jnolan@pszjlaw.com)

[vCard](#) | [Bio](#) | [LinkedIn](#)



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**From:** Ryan Messner [<mailto:ryanmessner@hotmail.com>]

**Sent:** Tuesday, December 26, 2023 5:57 PM

**To:** Jeffrey P. Nolan <[jnolan@pszjlaw.com](mailto:jnolan@pszjlaw.com)>

**Cc:** Cia H. Mackle <[cmackle@pszjlaw.com](mailto:cmackle@pszjlaw.com)>

**Subject:** Re: Suralign Holdings Filing

Jeffrey:

Thank you very much for reaching out, and for confirming receipt of my previous email communications regarding my Adversary Proceeding against Surgalign Holdings.

Can you please confirm that you and Cia Mackle (copied on your email response to me) are currently representing Surgalign Holdings, and if so, when did you enter your appearance?

Can you also confirm that Veronica Polnick of Jackson Walker was relieved of those duties on September 27, 2023, and if there is a withdrawal of record on file for Jackson Walker?

I am out of town for the holidays, and will return on January 2, 2024. I am available on January 2, 2024, or thereafter.

I appreciate your time, and for the reply.

Ryan

**Ryan Messner**

Paralegal | Notary Public, State at Large KY | Certified Remote Online Notary (RON)

859.559.7985 | [ryanmessner@hotmail.com](mailto:ryanmessner@hotmail.com) | [www.ron-ky.us](http://www.ron-ky.us)

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**From:** Jeffrey P. Nolan <[jnolan@pszjlaw.com](mailto:jnolan@pszjlaw.com)>  
**Sent:** Tuesday, December 26, 2023 8:09 PM  
**To:** [ryanmessner@hotmail.com](mailto:ryanmessner@hotmail.com) <[ryanmessner@hotmail.com](mailto:ryanmessner@hotmail.com)>  
**Cc:** Cia H. Mackle <[cmackle@pszjlaw.com](mailto:cmackle@pszjlaw.com)>  
**Subject:** Suralign Holdings Filing

Ryan,

We have not talked previously but I have been forwarded various emails and the issues surrounding the Motion to Dismiss, status conference and meet and confer. I also recently saw your email from Thursday regarding the Default Judgment.

Are you available tomorrow or Thursday to discuss? Please let me know what day and time is convenient and I will confirm.

Best Regards,

**Jeffrey P. Nolan**  
Pachulski Stang Ziehl & Jones LLP  
Tel: 310.277.6910 | Fax: 310.201.0760  
[jnolan@pszjlaw.com](mailto:jnolan@pszjlaw.com)  
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